

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACTIVE MEDIA SERVICES, INC.

Plaintiff,

v.

THE ORIGINAL SAN FRANCISCO
TOY MAKERS

Defendant.

Civil Action No.
04 CV 10244

CIVIL ACTION

COMPLAINT

Plaintiff, Active Media Services, Inc., by way of Complaint against the defendant, The Original San Francisco Toy Makers says as follows:

THE PARTIES

1. Plaintiff, Active Media Services, Inc. ("Active"), is a Delaware Corporation with its principal place of business located at One Blue Hill Plaza, Pearl River, New York.

2. Defendant, The Original San Francisco Toy Makers ("OSTM"), is, upon information and belief, a California corporation with its principal place of business located at 360 Oyster Point Boulevard, South San Francisco, California.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(a) (diversity of citizenship). The amount in controversy exceeds \$75,000 exclusive of interest and costs.

VENUE

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(a).

FIRST COUNT

5. On April 15, 2003 OSTM agreed to purchase media advertising from Active in the net amount of \$1.5 million no later than October 30, 2004 (the "Agreement").

6. Despite Active's performance, OSTM breached its contract with Active in that it failed to purchase media and failed to make payment to Active of amounts due under the Agreement.

7. As a direct and proximate result of OSTM's breach of contract, Active has suffered and continues to suffer damages.

WHEREFORE, plaintiff, Active Media Services, Inc. demands judgment against defendant, the Original San Francisco Toy Makers, for damages, interest, costs of suit, attorneys' fees and such other and further relief as the Court deems appropriate and just.

SECOND COUNT

8. Active repeats and reiterates the allegations contained in the First Count of its Complaint as if set forth herein at length.

9. By willfully and intentionally failing to purchase media from Active and otherwise failing to make payment as required under the Agreement, OSTM has breached its implied covenant of good faith and fair dealing.

10. As a direct and proximate result of OSTM's breach of the implied covenant of good faith and fair dealing, Active has suffered and continues to suffer damages.

WHEREFORE, plaintiff, Active Media Services, Inc. demands judgment against defendant, the Original San Francisco Toy Makers, for damages, interest, costs of suit, attorneys' fees and such other and further relief as the Court deems appropriate and just.

THIRD COUNT

11. Active repeats and reiterates the allegations contained in the First and Second Counts of its Complaint as if set forth herein at length.

12. OSTM represented to Active that it would purchase media, make payments and otherwise comply with the terms of the Agreement.

13. OSTM, in part, memorialized these representations on April 15, 2003.

14. OSTM knew or should have known that these representations were false when made.

15. Active relied on the representations of OSTM by entering into the Agreement and performing thereunder.

16. As a direct and proximate result of OSTM's misrepresentations, as set forth above, Active has suffered and continues to suffer damages.

WHEREFORE, plaintiff, Active Media Services, Inc. demands judgment against defendant, the Original San Francisco Toy Makers, for damages, compensatory and punitive, interest, costs of suit and such other and further relief as the Court deems appropriate and just.

FOURTH COUNT

17. Active repeats and reiterates the allegations contained in the First through Third Counts of its Complaint as if set forth herein at length.

18. As a direct and proximate result of the negligent misrepresentations my OSTM, as set forth above, Active has suffered and continues to suffer damages.

WHEREFORE, plaintiff, Active Media Services, Inc. demands judgment against defendant, the Original San Francisco Toy Makers, for damages, interest, costs of suit and such other and further relief as the Court deems appropriate and just.

FIFTH COUNT

19. Active repeats and reiterates the allegations contained in the First through Fourth Counts of its Complaint as if set forth herein at length.

20. As a direct and proximate result of the foregoing, OSTM has been unjustly enriched.

21. As a direct and proximate result of OSTM's unjust enrichment, Active has suffered and continues to suffer damages.

WHEREFORE, plaintiff, Active Media Services, Inc. demands judgment against defendant, the Original San Francisco Toy Makers, for damages, interest, costs of suit, attorneys' fees and such other and further relief as the Court deems appropriate and just.

MARC J. GROSS (MJG 6428)
Attorneys for Plaintiff

GREENBAUM, ROWE, SMITH & DAVIS LLP
6 Becker Farm Road
Roseland, NJ 07068
Phone: 973/535-1600
Fax: 973/535-1698

Dated: January 5, 2005

7.1 CERTIFICATION

MARC J. GROSS, of full age, under oath, hereby declares as follows:

1. I am a member of the Bar of the State of New York and admitted to practice before the United States District Court for the Southern District of New York.

2. I serve as counsel for plaintiff, Active Media Services, Inc. and certify that neither plaintiff nor its subsidiaries, parent or affiliates are publicly traded or otherwise involve securities or other interests that are publicly held.

I declare that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

MARC J. GROSS (MG 2648)

Dated: January 5, 2005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACTIVE MEDIA SERVICES, INC.

Plaintiff,

v.

THE ORIGINAL SAN FRANCISCO
TOY MAKERS

Defendant.

Civil Action No.

CIVIL ACTION

**CORPORATE DISCLOSURE STATEMENT
PURSUANT TO RULE 7.1 OF THE
RULES OF CIVIL PROCEDURE**

This Corporate Disclosure Statement is filed on behalf of plaintiffs Active Media Services, Inc. in compliance with the provisions of Rule 7.1, Federal Rules of Civil Procedure, stating that Active Media Services, Inc. is not publicly traded and that there is no publicly held corporation that owns 10% or more of its stock.

MARC J. GROSS (MG-2648)

Dated: January 4, 2005